

### **REMARKS**

In the Final Office Action, claims 1-8, 14-23, 31, and 36-40 were rejected. By this present Request for Continued Examination, Applicants have amended claims 1, 14, 31, and 36, and cancelled claims 20-23 without prejudice. With respect to these amendments, Applicants respectfully assert that no new matter has been added. Upon entry of the amendments, claims 1-8, 14-19, 31, and 36-40 will remain pending in the present patent application. In view of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

### **Rejections under 35 U.S.C. § 102**

In the Final Office Actions, claims 1-6, 8, 14-19, and 31 were rejected under 35 U.S.C. § 102(b) as anticipated by either the Clinton reference (U.S. Patent No. 2,666,479; hereinafter "Clinton") and/or the Miller reference (U.S. Patent No. 2,706,446; hereinafter "Miller").

Applicants, however, respectfully assert that the pending claims are not anticipated by Clinton, because the pending claims recite features not disclosed by this cited reference. As will be appreciated, anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *See Titanium Metals Corp. v. Banner*, 227 U.S.P.Q. 773 (Fed. Cir.1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *See In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir.1990). Moreover, for anticipation, the cited reference must not only disclose all of the recited features but must also disclose the *part-to-part relationships* between these features. *See Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 U.S.P.Q. 481, 486 (Fed. Cir. 1984). In other words "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 165 U.S.P.Q. 494, 496

(C.C.P.A. 1970). Thus, the prior art reference must show the *identical invention* “in as complete detail as contained in the ... claim” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Accordingly, Applicants need only point to a single element or claimed relationship not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter. A *strict correspondence* between the claimed language and the cited reference must be established for a valid anticipation rejection.

As will also be appreciated, during patent examination, the pending claims must be given an interpretation that is reasonable and consistent with the specification. *See In re Prater*, 162 U.S.P.Q. 541, 550-51 (C.C.P.A. 1969); *In re Morris*, 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997); see also M.P.E.P. § 2111 (describing the standards for claim interpretation during prosecution). Indeed, the *specification* is “the primary basis for construing the claims.” *See Phillips v. AWH Corp.*, No. 03-1269, -1286, at 13-16 (Fed. Cir. July 12, 2005) (citations omitted). It is usually dispositive. *See id.* Interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *See In re Cortright*, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); see also M.P.E.P. § 2111. That is, recitations of a claim must be read as they would be interpreted by those of ordinary skill in the art. *See Rexnord Corp. v. Laliram Corp.*, 60 U.S.P.Q.2d 1851, 1854 (Fed. Cir. 2001); see also M.P.E.P. § 2111.01. In summary, an examiner, during prosecution, must interpret a claim recitation as one of ordinary skill in the art would reasonably interpret the claim in view of the specification. *See In re American Academy of Science Tech Center*, 70 U.S.P.Q.2d 1827 (Fed. Cir. 2004).

Moreover, for anticipation, an examiner must ensure that if a claimed feature is not expressly disclosed in a cited reference, it must then be *necessarily* present in the thing described in the cited reference. *See In re Robertson*, 49 U.S.P.Q.2d 1949 (Fed.

Cir. 1999). The mere fact that a certain *may* result from a given set of circumstances is not sufficient. *See id.*

With the foregoing in mind, Applicants respectfully demonstrate below that Clinton does not disclose all of the features recited in the pending claims of the present patent application.

**First Rejection Under Section 102**

In the Final Office Action, claims 1-6, 8, 14-19, and 31 were rejected under 35 U.S.C. § 102(b) as anticipated by Clinton. Applicants, however, respectfully submit that Clinton does not disclose all of the claimed features of independent claims 1, 14, and 31.

**Amended Independent Claim 1 and the Claims Depending Therefrom**

For example, Clinton does not disclose “a *valve assembly removable* from and positionable in the torch butt in two mutually opposed positions, and operable to control a first flow of fluid through the torch butt,” as recited in independent claim 1. By contrast, Clinton discloses a valve member 23 that is not removable and that resides in the valve block 22 in a single operating position. *See generally* Clinton, Fig. 2 (noting the location of valve member 23 in valve block 22). As argued previously, it is the valve member 23 that controls the flow of fluid downstream into the torch, specifically controlling the ingress of fluid from inlet 25 and the egress of fluid from outlet 30. *See id.* at col. 3, ll. 48-65. Thus, any “valve assembly” of Clinton must include this valve member 23. However, Clinton makes clear that it is only the “valve operating mechanism”—which does not include the valve member 23—that is removable. *See id.* at col. 4, ll. 60-65 (stating that “[t]o accomplish this reversal, pins 33 and 34 are first removed and then the valve-operating mechanism is removed through a slot 51 in the torch handle 17”). In fact, Clinton makes expressly clear what components are include in this “valve-operating mechanism”: “hand lever 21, bell-crank lever 32, connecting link 37 and spring 42”. *See*

*id.* at col. 4, ll. 65-68 (Applicants stressing the absence of valve member 23). By expressly excluding the valve member 23 from the list of the components of the “valve-operating mechanism” and by clearly stating that only the “valve-operating mechanism” can be removed, Clinton teaches that valve member 23 is not and cannot be removed. And nothing in Clinton suggests to the contrary. Indeed, Applicants respectfully submit that it is speculative to assert otherwise, and such speculation is not sufficient for anticipation. Furthermore, the absence of valve member 23 from the valve-operating mechanism of Clinton establishes that this mechanism is not equivalent to the claimed valve assembly, particularly in view of the fact that claims must be interpreted in a reasonable manner that is consistent with the specification. Simply put, something cannot be considered a valve assembly if it does not include a valve.

Therefore, Applicants respectfully assert that Clinton does not anticipate independent claim 1 and its respective dependent claims 2-8. With the foregoing in mind, Applicants respectfully request reconsideration and allowance of claims 1-8.

**Independent Claims 14 and 31 and the Claims Depending Therefrom**

Additionally, Clinton does not disclose a valve assembly “such that the valve assembly receives the fluid from the first intake when in the first orientation and from the second intake when in the second orientation,” as recited in amended independent claim 14, nor does it disclose a “cutting valve assembly [that] receives cutting oxygen from the first intake in the first orientation and from the second intake in the second orientation,” as recited in amended independent claim 31. By contrast, Clinton describes a device in which the valve member 23 receives any cutting gas from inlet passage 25 regardless of the position or orientation of hand lever 21. *See* Clinton, col. 3, ll. 47-53; FIGS. 2-4. In other words, there is only a single intake in Clinton—not the two as claimed. Thus, Clinton does not disclose all of the features recited in claims 14 and 31.

Accordingly, Applicants respectfully submit that Clinton does not anticipate independent claim 14 and its respective dependent claims 15-19 and independent claim 31. With the foregoing in mind, Applicants respectfully request reconsideration and allowance of claims 14-19 and 31.

**Second Rejection Under Section 102**

In the Final Office Action, claims 1-6, 8, and 36-40 were rejected under 35 U.S.C. § 102(b) as anticipated by Miller. Applicants, however, respectfully submit that Miller does not disclose all of the claimed features of independent claims 1 and 36.

**Amended Independent Claim 1 and the Claims Depending Therefrom**

For example, Miller does not disclose “a valve assembly...operable to control a first flow of a fluid through the torch butt and into the *dedicated passage* in both of the opposed positions,” as recited in amended independent claim 1. (Emphasis added.) Instead, Miller discloses an assembly in which the valve assembly 11 provides fluid to two separate tubes depending on the valve assembly’s orientation: Into a first tube 39 when in one position, and into a second tube 40 when in the other position. *See* Miller, FIGS. 2 and 3 (noting the difference between the two figures). In the Miller device, the entire valve assembly 11 is positionable in two orientations with respect to the fitting 32, which remains stationary. *See id.* (noting the location of arced portion 62 in FIGS. 2 and 3). By changing the position of the valve assembly 11, the Miller device alters the operating action of the lever, between a pressed configuration for opening the shears 13 and 15 or a pressed configuration for closing the shears 13 and 15. *See id.* at col. 1, ll. 27-32. To effectuate this, the Miller device requires a variance between which tube (39 or 40) is the operating inlet tube. For example, when in the position of FIG. 3, actuating the handle 11 of Miller allows pressurized fluid to enter tube 40, causing the fluid to enter chamber 28, driving the piston 30 forward, and causing the shears 13 and 15 to separate. *See id.* at col. 3, ll. 10-27. By contrast, in the position of FIG. 2, squeezing handle 11 causes fluid to enter tube 39 and,

in turn, causes the shears 13 and 15 to come closer together. Thus, repositioning the valve assembly 11 of Miller changes the passage to which fluid is provided—thus failing to provide a *dedicated passageway* as recited.

Therefore, Applicants respectfully assert that Miller does not disclose all of the features recited in amended independent claim 1 and its respective dependent claims 2-8. With the foregoing in mind, Applicants respectfully request reconsideration and allowance of claims 1-8.

**Amended Independent Claim 36 and the Claims Depending Therefrom**

Additionally, Applicants respectfully submit that Miller does not disclose “a valve assembly...operable to control a flow of the fluid through the torch via *a passageway* in the valve body...and operably positionable in the valve body in two mutually opposed positions to control the flow of fluid *into the passageway*,” as recited in amended independent claim 36. Instead, as is discussed above, the Miller device requires two passages, each being employed as an inlet based upon the orientation of the assembly 11. Thus, Miller does not disclose a valve assembly as claimed.

Therefore, Applicants respectfully submit that Miller does not anticipate amended independent claim 36 and its respective dependent claims 37, 39, and 40. With the foregoing in mind, Applicants respectfully request reconsideration and allowance of claims 36, 37, 39, and 40.

**Rejections under 35 U.S.C. § 103**

In the Final Office Action, claim 7 was rejected under 35 U.S.C. § 103(a) as being obvious in view of Clinton and the Dimock et al. reference (U.S. Patent No. 5,571,427; hereinafter “Dimock”), and as being obvious in view of Miller and Dimock. Applicants, however, respectfully assert that dependent claim 7 is patentable at least by virtue of its

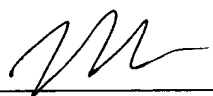
dependence on allowable base claim 1. Keeping in mind the foregoing arguments regarding Clinton and Miller, Applicants respectfully assert that Dimock does not obviate these above-discussed efficiencies. Accordingly, Applicants respectfully assert that dependent claim 7 is patentable not only by virtue of its dependence to independent claim 1, but also by virtue of the additionally features recited therein. With the foregoing in mind, Applicants respectfully request reconsideration and allowance of dependent claim 7.

**Conclusion**

If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: November 25, 2005

  
\_\_\_\_\_  
Manish Vyas  
Reg. No. 54,516  
FLETCHER YODER  
P.O. Box 692289  
Houston, TX 77269-2289  
(281) 970-4545